

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GUADALUPE RAMIREZ,

No. C 08-3848 WHA (PR)

Petitioner,

ORDER OF DISMISSAL

vs.

ROBERT HOREL, Warden,

Respondent.

This is a habeas case filed pro se by a state prisoner. He states clearly in the petition that he is “not challenging his criminal conviction or sentencing in these [] proceedings,” and indeed the substance of the petition goes to a May, 2008, state court proceeding in which his parental rights were terminated. He contends that counsel, apparently including appellate counsel, was ineffective. Because these claims are unrelated to the fact or duration of petitioner’s confinement, a habeas case is not the proper way to raise them. *See Moran v. Sondalle*, 218 F.3d 647, 650-52 (7th Cir. 2000); *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (civil rights action is proper method of challenging conditions of confinement); *Crawford v. Bell*, 599 F.2d 890, 891-92 & n.1 (9th Cir. 1979) (affirming dismissal of habeas petition on basis that challenges to terms and conditions of confinement must be brought in civil rights complaint). The petition will be dismissed.

In an appropriate case a habeas petition may be construed as a Section 1983 complaint. *Wilwording v. Swenson*, 404 U.S. 249, 251 (1971). Although the court *may* construe a habeas

petition as a civil rights action, it is not *required* to do so. In the time since the *Wilwording* case was decided there have been significant changes in the law. For instance, the filing fee for a habeas petition is five dollars, and if leave to proceed in forma pauperis is granted, the fee is forgiven. For civil rights cases, however, the fee is now \$350 and under the Prisoner Litigation Reform Act the prisoner is required to pay it, even if granted in forma pauperis status, by way of deductions from income to the prisoner's trust account. *See* 28 U.S.C. 1915(b)(1). A prisoner who might be willing to file a habeas petition for which he or she would not have to pay a filing fee might feel otherwise about a civil rights complaint for which the \$350 fee would be deducted from income to his or her prisoner account. Also, a civil rights complaint which is dismissed as malicious, frivolous, or for failure to state a claim would count as a "strike" under 28 U.S.C. § 1915(g), which is not true for habeas cases.

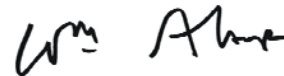
In view of these potential pitfalls for petitioner if the Court were to construe the petition as a civil rights complaint, the case will be dismissed without prejudice to petitioner filing a civil rights action if he wishes to do so in light of the above.

CONCLUSION

Petitioner's motion for leave to proceed in forma pauperis (document number 2 on the docket) is **GRANTED**. The petition is **DISMISSED**. The clerk shall close the file.

IT IS SO ORDERED.

Dated: August 22, 2008.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

GUADALUPE RAMIREZ,

Plaintiff,

v.

ROBERT HOREL, Warden,

Defendant.

Case Number: CV08-03848 WHA

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 25, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Guadalupe Ramirez
P-68785/C9-208
Pelican Bay State Prison
PO Box 7500
Crescent City, CA 95532

Dated: August 25, 2008

Richard W. Wieking, Clerk
By: D. Toland, Deputy Clerk